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**MARITIME DELIMITATION  
OF THE CONTINENTAL SHELF  
IN EUROPE WITH  
SPECIAL REFERENCE  
TO THE MEDITERRANEAN SEA**

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UNIVERSITY OF CAPE TOWN  
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## **ABBREVIATIONS**

<b>AJIL</b>	American Journal of International Law
<b>BYIL</b>	The British Yearbook of International Law
<b>EEZ</b>	Exclusive Economic Zone
<b>ICJ</b>	International Court of Justice
<b>ICJ Rep.</b>	Reports of the ICJ
<b>ICLQ</b>	International and Comparative Law Quarterly
<b>ILC</b>	International Law Commission Yearbook
<b>ILR</b>	International Law Reports
<b>MP</b>	Marine Policy
<b>ODIL</b>	Ocean Development and International Law Journal
<b>UNCLOS I</b>	The First United Nations Conference on the Law of the Sea
<b>UNCLOS III</b>	The Third United Nations Conference on the Law of the Sea

## **TABLE OF CASES**

**The Anglo-French Continental Shelf case (Court of Arbitration - 1977-1978)**

**Continental Shelf (Libya/Malta) (ICJ-1982)**

**Continental Shelf (Tunisia/Libya) (ICJ - 1982)**

**North Sea Continental Shelf cases (Denmark/Germany; Netherlands/Germany) (ICJ - 1969)**

## **AGREEMENTS**

**Italo-Yugoslav Agreement (1968)**

**Greco-Italian Agreement (1977)**

**Italo-Tunisian Agreement (1971)**

**Italo-Spanish Agreement (1974)**

## **PREFACE**

The purpose of this thesis is to examine the development of State practice, conventions, judicial decisions, arbitral awards and settlements on the delimitation of maritime boundaries in a European and Mediterranean context.

Conclusions will be expressed on important principles which may be of relevance in future delimitations, not only in these areas but also more generally.

**MARITIME DELIMITATION**  
**OF THE CONTINENTAL SHELF**  
**IN EUROPE WITH SPECIAL REFERENCE**  
**TO THE MEDITERRANEAN SEA**

PART I

**INTRODUCTION**

**SOURCES OF THE LAW OF MARITIME DELIMITATION**

The law of maritime delimitation is fairly new. Just over thirty years ago it did no more than merely place States under an obligation to delimit their maritime zones and boundaries and, if necessary, enter into negotiations in order to do so, by means of agreement with a view to reaching an equitable solution<sup>1</sup>. In the field of maritime delimitation the primary source of law has been judgments and arbitrations. Thus, today, the law is “*essentially judge-made law*”<sup>2</sup>.

There have been two multilateral treaties which deal with the law on delimitation of the continental shelf: The *Geneva Convention on the Continental Shelf*, 1958 (hereinafter, the Geneva Convention) and the *Law of the Sea Convention*, 1982 (hereinafter, LOSC). However, in the words of Weil, “*Although this body of treaty provisions ... may seem impressive, it has to be recognized that its contribution to the law of maritime delimitation has been relatively modest*”<sup>3</sup>. The 1958 provision regarding delimitation was given minimal effect by the ICJ and arbitration tribunals. This prevented it from playing the “*dynamic and creative role it might have*”<sup>4</sup>. The provisions on delimitation in the 1982 convention are notoriously vague and imprecise, and have been subject to much criticism. In essence, they consist of a general reference to already existing rules of international law, and therefore require detailed analysis of the law as it stands in order to determine what these rules are<sup>5</sup>. No precise rule is stated in the Convention. Thus, these provisions, disappointingly, must be given the status of a set of general guidelines and principles.

States are free to draw up their own boundaries by agreement without being bound by the set of rules which would bind a judge or arbitrator, although in practice States do at least attempt to base their claims on the law and employ legal arguments to back their claim. In a relatively short space of time the ICJ has dealt extensively with the law of maritime delimitation - some of the

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<sup>1</sup> P. Weil, *The Law of Maritime Delimitation - Reflections*, 1989, p. 6. Refers to the law prior to the Geneva Convention on the Continental Shelf, 1958

<sup>2</sup> *ibid*, p.6

<sup>3</sup> *ibid*, p. 7

<sup>4</sup> *ibid*

<sup>5</sup> See E.D. Brown, *International Law of the Sea*, Volume I, 1994, p. 160

He continues to say that such an inquiry into the present state of the law reveals the “*sometimes vague and uncertain, sometimes unsatisfactory nature of the judgments and awards so far given by the international courts and tribunals to which bilateral disputes have been referred.*”

more important cases which will be examined below are the North Sea cases (1969)<sup>6</sup>, the *Tunisia/Libya* Judgment(1982)<sup>7</sup>, the *Malta/Libya* judgment (1985)<sup>8</sup>, as well as in the Anglo-French Arbitration (1977-1978)<sup>9</sup>.

Although *prima facie* the case law may appear to have developed incrementally by analagous references to previous cases, this view overlooks the frequently contradictory judgments. For example, what is meant by equity and equitable principles in one judgment is not consistent with the next, although the shift in meaning is obscured by the fact that the judge cites the view in the previous decision approvingly<sup>10</sup>. Contradictions and inconsistencies have even been know to occur in the same judgment<sup>11</sup>.

The law of maritime delimitation has been descibed as "*a discontinuous ensemble, in which various principles and rules of law coexist, with no hierarchy between them, and without its always being possible to determine their mutual relations with precision...*". and a "*...loosely woven fabric*"<sup>12</sup>. This makes it difficult to describe the law systematically as every question and every problem involves further questions and problems<sup>13</sup>.

Other difficulties are caused by the fact that although the Law of the Sea Convention, 1982 (LOSC) has come into force (1994) and more than half of the States have become parties to it, there are still some States which are parties to the Geneva Convention, 1958, and have not yet ratified LOSC. They are still bound only by the Geneva Convention. Thus it is necessary to consider both the "old" law and the new. Also, a substantial amount of difficulty is caused by the delimitation provisions of the Law of the Sea Convention which are vague and poorly drafted. E.D. Brown describes the rules as consisting both largely of "*a general reference to the applicable rules of international law*"<sup>14</sup>, therefore requiring a thorough investigation into what the current state of the law of maritime delimitation which, unfortunately, is also somewhat vague and indefinite, and not without an element of ambiguity as a result of the unsatisfactory nature of some of the judgments and awards given.

A degree of inadequacy in the law has been the natural result of attempting to strike a balance between two conflicting requirements; the first, to define rules which are general enough to cover all possible situations which may arise, and the second, to ensure that the rule is not so general that in some cases it may lead to an unpredictable or inequitable result. This in itself is a latent contradiction. The courts have seized "equity" as their solution to ensuring the correct balance. But this concept they have repeatedly refused to define.

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<sup>6</sup> *The North Sea Continental Shelf cases (Denmark/Germany; Netherlands/Germany)*, (ICJ - 1969)

<sup>7</sup> *Continental Shelf (Tunisia/Libya)*, (ICJ - 1951)

<sup>8</sup> *Continental Shelf (Libya/Malta)*, (ICJ - 1985)

<sup>9</sup> *Anglo-French Continental Shelf case (Court of Arbitration - 1987-88)*

<sup>10</sup> Weil, *supra*, p.10 refers to "*great gulf between the theory of one judgment and that of another*"

<sup>11</sup> *ibid*, p.11

<sup>12</sup> *ibid*, p. 11

<sup>13</sup> Judges Ruda, Bedjauoi and Jiménez de Aréchaga, in the *Libya/Malta judgment*, *supra*, p. 90, para 37

<sup>14</sup> Brown, *supra*, p. 155

In the law of delimitation, in many respects, "*the conceptual framework remains fragile and uncertain, and the concrete solution adopted have not always been convincing*"<sup>15</sup>. Since the law in this field is not yet complete it is an interesting topic on which to comment.

## **HISTORY**

The Truman Proclamation of 1945 and State practice which ensued over the next six years provided the basis for the development of rules governing delimitation. The Truman Proclamation provided that:

*"In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles"*

and that

*"the continental shelf may be regarded as an extension fo the land-mass of the coastal nation and thus naturally appurtenant to it"*<sup>16</sup>.

Subsequent to this provisions made for delimitation by the majority of States included references to "equitable principles" and agreement with other states.

However, development in the ensuing five to six years was just a "starting point"<sup>17</sup> As Lord Asquith stated in 1951, "*I am of the opinion ... that in no form can the doctrine claim as yet to have assumed hitherto the hard lineaments or the definitive status of an established rule of international law*"<sup>18</sup>.

However, significant progress was made between 1950 and 1956 during which time the International Law Commission (ILC) considered the law on continental shelf delimitation, building on the basic structure which existed at the time. Its formulation of draft articles on the continental shelf was adopted by UNCLOS I in the form of Article 6 of the Geneva Convention of 1958.

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<sup>15</sup> Weil, *supra*, p. 12

<sup>16</sup> Presidential Proclamation No. 2667, in United Nations, *Laws and Regulations on the Regime of the High Seas*, Vol. I (*United Nations Legislative Series, ST/LEG/SER.B/1*, 11 January 1951, pp38 - 40, Vol. II, doc. 7.3)

<sup>17</sup> Brown terms this period of five year a "starting point", *ibid*, p. 161

<sup>18</sup> *Petroleum Development Ltd v. Sheikh of Abu Dhabi (1951)*, *International Law Reports*, 1951, p.144

## THE RULE IN THE GENEVA CONVENTION OF THE CONTINENTAL SHELF 1958

### Article 6 and special circumstances

It has been suggested that the reason why the rule in Article 6 has often been misunderstood lies in the way it has been drafted<sup>19</sup> and the fact that a literal interpretation may invite misunderstanding of the provision as a whole. In fact, in its judgment in the *North Sea Continental Shelf case* (1969) the ICJ interprets a hierarchical order<sup>20</sup> into the linguistic construction of Article 6 which causes the proper meaning of the clause to be overlooked. However, recourse to the *travaux préparatoires* provides a full account of the meaning of the Article and the intention of the drafters<sup>21</sup>.

Article 6 provides that in the case of opposite and adjacent States, the boundary must be determined by agreement between the two States. In the absence of agreement and unless another boundary is justified by special circumstances, the boundary in the case of opposite States is a median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured. In the case of adjacent States the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

The inclusion of the term "special circumstances" was opposed by three States - Greece, Portugal and Yugoslavia - although most delegations supported it. The objective referred to in the Report of a Committee of Experts<sup>22</sup> was the attainment of an 'equitable solution'<sup>23</sup>. The term cannot cover a closed list of circumstances<sup>24</sup>. Its purpose, evident from the drafting history of Article 6, is to give "elasticity"<sup>25</sup> to the general rule of equidistance in cases where departure from it is necessitated by certain conditions such as any exceptional configuration of the coast, the presence of islands or of navigable channels<sup>26</sup>. One comment - an opinion shared by others<sup>27</sup> - was that "*the International Law Commission's text was sufficiently flexible to provide all States whatever their geographical situation with the necessary safeguard*"<sup>28</sup>.

The main category of special circumstances is exceptional geographical circumstances, although

14 F. A. Ahnisch, *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea*, 1992, p. 53. For example, the wording in the Article could be taken to infer that 'equidistance' must be considered as a secondary solution to the primary obligation to effecting delimitations by agreement

20 Ahnisch, supra, p. 53. "Article 6 is so framed as to put second the obligation to make use of the equidistance method, causing it to come after a primary obligation to effect delimitation by agreement"

21 The Vienna Convention on the Law of Treaties, 1969, art. 32, provides that when a literal interpretation of the terms of a treaty leads to ambiguity or a manifestly absurd or unreasonable result, recourse may be had to the preparatory work of the treaty

22 The Committee was set up to advise the ILC in its session of 1953

23 Ahnisch, supra, p. 56

24 Brown, supra, p. 163

25 See comments by members of the Commission, *Yearbook of the ILC* (1953), ii. 213, at 216

26 ILC's Commentary on its penultimate, 1953 draft on article 6, quoted in Brown, supra, p. 162

27 UNCLOS I, *Official Records*, vi. 92 - 96, statements by delegates of France, the United States, the United Kingdom, Sweden and Italy

28 *ibid.* vi. 98 para. 39, comment made by the delegate of Indonesia

there may be other considerations such as valuable mineral deposits or possession of mineral rights, navigation and fishing rights and special circumstances of an historical nature. As stated in the pleadings (of Denmark-Netherlands) in the *North Sea Continental Shelf case*, special circumstances are only to be considered when they *justify* another boundary line. Thus, "*only if deviation from the equidistance line is justified towards both States - i.e. the State which 'gains' and the State which 'loses' by the correction* " can the principle of equidistance be departed from<sup>29</sup>.

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<sup>29</sup> Brown, *supra*, p.163, quoting the *Common Rejoinder, ICJ Pleadings, North Sea Continental Shelf, Vol. I*, p. 526 - 527

## THE FORMATIVE ROLE OF DECISIONS AND AN EVALUATION

What will follow is an examination of two cases, the North Sea cases and the Anglo-French Award which conflict somewhat with article 6, mostly as a result of their different interpretations of 'equidistance'.

### THE NORTH SEA CONTINENTAL SHELF CASES (1969)

Facts:

The cases concerned the delimitation of the continental shelf situated off the North Sea coasts of the Federal Republic of Germany, Denmark, and The Netherlands. The coast-line of Germany in the North Sea lies at a concave angle of about 100 degrees. The ICJ was asked to identify the principles and rules of international law applicable to the delimitation of the continental shelf between the parties.

Denmark and The Netherlands contended that the delimitation should be governed by Article 6. As there were no special circumstances their boundary with Germany should be determined by the principle of equidistance.

The Federal Republic of Germany contended that equidistance should not be applied in this case because Germany was not a party to the Geneva Convention<sup>30</sup>, Article 6 was not yet part of customary international law, and in any case should not be applied in situations where an inequitable result would occur. Further, even if Article 6 had become customary law, the existence of special circumstances in the North Sea would preclude its application<sup>31</sup>.

Held:

Equidistance was not obligatory, particularly as in certain geographical circumstances, such as a concave or convex coastline, when even "*the slightest irregularity in a coastline is automatically magnified by the equidistance line...*"<sup>32</sup> the equidistance method leads unquestionable to inequity. It appears that the Court was overly concerned with equidistance in isolation without attempting to establish whether application of the 'special circumstance' rule would remedy the resulting inequity<sup>33</sup>. Thus, the Court failed to utilize the inbuilt flexibility or "elasticity" inherent in Article 6 (as referred to above).

Further, although the Court expressed doubts as to the appropriate role to be "*played by the notion of special circumstances*" and to "*the exact meaning and scope*" thereof, it appears that the relevant factors it cited to be taken into account during negotiations consisted of what could be considered to be 'special circumstances' under Article 6<sup>34</sup>. These included the general configuration of the coast-line and presence of special or unusual features, physical and

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<sup>30</sup> Germany had not ratified the treaty and therefore was not bound by it

<sup>31</sup> The special circumstances were Germany's concave or recessing coast

<sup>32</sup> Submissions (No. 3) of the Federal Republic of Germany

<sup>33</sup> Ahnisch, supra, p. 59

<sup>34</sup> *ibid*, p. 60

geological structure and natural resources of the continental shelf and a reasonable degree of proportionality<sup>35</sup> .

In one respect the Court does give useful guidance in the interpretation of the rule in Article 6: Delimitation is to be effected by agreement in accordance with equitable principles, and taking into account relevant circumstances, "*in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other*"<sup>36</sup>. In dealing with the meaning of equity, the Court pointed out that there is no *legal limit* to considerations which may be taken into account in ensuring that equitable principles are applied, and that a variety of features must be balanced, such as geological factors relating to the shelf<sup>37</sup>, geographical configuration<sup>38</sup>, unity of deposits, a degree of proportionality between the extent of the continental shelf appurtenant to the States concerned and the length of their respective coast-lines<sup>39</sup> . It is submitted that this could be taken to imply that equitable factors which could justify a boundary (apart from a true equidistance line) under international customary law are the same as the factors which would constitute special circumstances under Article 6 if given a broader construction.

Further on the meaning of equity, the Court stated these requirements:

- the existence of an obligation to enter into meaningful negotiations with a view to arriving at an agreement;
- an obligation to act in such a way that equitable principles are applied, using equidistance (although other methods exist and may be utilized alone or combined with another method);
- the continental shelf of a State must be the natural prolongation of its land territory and must not encroach upon what is the natural prolongation of the territory of another state<sup>40</sup>
- Should inequity be the result of the application of equidistance in certain geographical circumstances such as concavity of the coast-line, then such consequences should be remedied or compensated for as far as possible...<sup>41</sup> ;
- Equity does not mean equality<sup>42</sup>. Rather, it would be more accurate to say that a State should not enjoy continental shelf rights significantly greater than its neighbouring States

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<sup>35</sup> *ibid*

<sup>36</sup> ICJ Reports (1969), p. 53

<sup>37</sup> *ibid*, p.51, para. 95

<sup>38</sup> *ibid*, p.51, para. 96

<sup>39</sup> *ibid*, p.52, para. 98

<sup>40</sup> ICJ Reports (1969), p. 47

<sup>41</sup> *ibid*, p.49, para. 87

<sup>42</sup> *ibid*, p.49, para. 91

merely by virtue of the fact that its coast-line is convex and its neighbour's concave<sup>43</sup>.

### The Court's Decision Versus State Practice

The *North Sea* judgment has been criticised somewhat for its "exclusive concern" with the Truman Proclamation<sup>44</sup> which, although a landmark decision in regards to the concept of the continental shelf, is somewhat vague and not as relevant in relation to certain other considerations<sup>45</sup>. Concern was at the expense of identifying a unified rule of 'equidistance-special circumstances' from *travaux préparatoires* which accorded with the intention of the drafters, and from actual State practice<sup>46</sup>. To quote Ahnish. "This approach might have proven ultimately to be more productive for future settlements and would indeed have helped the successive efforts, both in UNCLOS III and adjudication, to discern some positive rules on delimitation"<sup>47</sup>. Brown, too, agrees with this assertion<sup>48</sup>.

### THE ANGLO-FRENCH CONTINENTAL SHELF CASE (1977)<sup>49</sup>

This was the second landmark decision in the development of the law of delimitation between neighbouring States. The Tribunal was asked to draw the continental shelf boundary between the United Kingdom and France in the English Channel.

#### FACTS:

Both parties had ratified the Geneva Convention, although France had made a number of reservations to Article 6 which the United Kingdom did not accept. The Court stated that this "would not make much practical difference"<sup>50</sup>. It simply meant that some parts of the area in question would be governed by Article 6 and others by customary international law, which would amount to the same thing anyway.

#### HELD:

The United Kingdom argued that under Article 6 the burden of proof was on France to prove the existence of any special circumstances which would justify abandonment of the median line boundary. In other words the assertion is that the median line (or equidistance) is the general rule, and 'special circumstances' the exception.

However, the Court held that "Article 6... does not formulate the equidistance principle and 'special circumstances' as two separate rules", but rather "as a single rule, a combined equidistance-special circumstance rule". In doing so the Court abandons the element of

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<sup>43</sup> *ibid*, p.50, para. 91

<sup>44</sup> Brown, *supra*, p. 168

<sup>45</sup> By 1969 the Truman Proclamation was not as relevant to the law of delimitation as were more recent developments in State practice, the work of the ILC and of UNCLOS I following the Truman Proclamation

<sup>46</sup> Ahnish, *supra*, p. 63

<sup>47</sup> *ibid*

<sup>48</sup> Brown, *supra*, p. 168; see section headed "The Court's decision in the light of State practice: a regrettable judgment"

<sup>49</sup> *Anglo-French Continental Shelf case (Court of Arbitration - 1977 - 1978)*, ILM 397

<sup>50</sup> *Anglo-French Decision (Decision)*, para 65

hierarchy, which was an erroneous interpretation in Article 6 in the *North Sea* judgment, and dispels the notion of any burden of proof in regard to the existence of special circumstances.<sup>51</sup>

Article 6's interpretation as a 'single rule' means that although questions of fact are to be accounted for, the question is actually one of law. The significance of this 'single rule' interpretation is that the relevance of special circumstances does not depend on a pre-existing claim to invoke special circumstances advanced by the interested State when ratifying or acceding to the Convention. Also, an element of elasticity is introduced in the fact that Article 6 now allows the judge discretion to consider the geographical and other circumstances (lying within the rules of delimitation).<sup>52</sup>

Certain principles examined by the Tribunal. These were as follows:

#### Natural Prolongation

The Tribunal supported the view expressed in the *North Sea cases* that a coastal State has an inherent right to the continental shelf which is a natural prolongation of its land territory, and that its continental shelf must be "*...the natural prolongation of its land territory and must not encroach upon what is the natural prolongation of the territory of another State*"<sup>53</sup>. However, it also emphasised that this was not a solution, but rather a statement of the problem<sup>54</sup>. Such a situation arises when the natural prolongation of the territories of both States constitutes the same single area of continental shelf.

Natural Prolongation is not a relevant factor in delimiting boundaries on the continental shelf, unless "*there is a major geological discontinuity running laterally seawards from the vicinity of the coastal terminus of the land boundary of adjacent States, or lying between the coasts of opposite States*"<sup>55</sup>.

#### 'Special circumstances' and 'equitable principles'

France had made a number of reservations to Article 6. According to the Arbitration, this simply meant that some parts of the area in question would be governed by Article 6 and others by international customary law, although Article 6 was applicable to the delimitation in principle. Having said this, though, the Arbitration referred to the customary law rules discussed in the *North Sea* judgment. These rules were applicable in defining the conditions for applying the equidistance-special circumstances rule which are not adequately defined in Article 6<sup>56</sup>. It stated that:

*"...the equidistance-special circumstances rule and the rules of customary law have the same object - the delimitation of the boundary in accordance with equitable principles. In the view of this Court, therefore, the rules of customary law are a relevant and even essential means*

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<sup>51</sup> Ahnish, supra, p. 64 - 65

<sup>52</sup> *ibid*

<sup>53</sup> Decision, para 79. Quoted by Brown, supra, p. 172

<sup>54</sup> *ibid*

<sup>55</sup> *ibid*. Quoted by Brown, supra, p. 173

<sup>56</sup> Decision, para 75. Quoted by Brown, supra, p. 175

*both for interpreting and completing the provisions of Article 6*<sup>57</sup>.

The Arbitration found that there would be little practical difference between applying customary law rather than Article 6 - which was necessary in light of France's reservations - as it would lead to "...*much the same result*"<sup>58</sup>. Thus, the view was taken that the two are almost the same, thereby departing from the view in the *North Sea* judgment where only a tenuous link was made between them. However, the statement was preceded by the term "...*in the circumstances of this case*"<sup>59</sup>. Also, Brown submits that it proves nothing about the relationship between the rules of Article 6 and the rules of international customary law<sup>60</sup>. He considers that although 'special circumstances' under Article 6 would also constitute 'factors creative of inequity' under international customary law, the reverse is not necessarily true. Factors considered to be creative of inequity will not necessarily also fall within the definition of special circumstances under Article 6<sup>61</sup>.

Further on in the award<sup>62</sup> the requirements of 'equitable principles' under customary law and the effects of 'special circumstances' are considered to be "*differences of approach and terminology rather than of substance*"<sup>63</sup>. Once again, the statement must be considered to be incorrect as a general principle, although it may be reasonable when applied only to the circumstances of this case<sup>64</sup>.

The Court found that the presence of the Channel Islands close to the French coast must be considered as a circumstance creative of inequity and a 'special circumstance' under Article 6. It then considered other 'relevant circumstances' and 'equitable considerations'.

### The Burden of Proof

It was argued that under Article 6 the burden of proof was on France to prove the existence of any special circumstances which would justify abandonment of the median line boundary. Thus the assertion is that the median line (or equidistance line) is the general rule, and 'special circumstances' the exception to the rule<sup>65</sup>. This suggests that two separate rules could be applied - one rule, one exception.

The Tribunal did not accept this argument and doubted that there was any burden of proof here. It stated that "*Article 6... does not formulate the equidistance principle and 'special circumstances' as two separate rules*", but rather "*as a single rule, a combined equidistance-*

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57 *ibid*

58 Ahnish, *supra*, p.64

59 *ibid*

60 Brown, *supra*, p.174

61 *ibid*

62 Decision, para 148. Quoted by Brown, *supra*, p. 173

63 *ibid*

64 *ibid*

65 *ibid*, p. 174. See also Ahnish, *supra*, p. 64

*special circumstance rule*"<sup>66</sup> . The existence of special circumstances was an essential consideration when applying the equidistance principle. This question was always one of law of which the tribunal must itself, *proprio motu*, take cognisance when applying Article 6<sup>67</sup>.

By interpreting Article 6 in this way the court rejects the existence of a hierarchy between the two parts of the rule and the notion of any burden of proof in regard to the existence of special circumstances<sup>68</sup> .

Ahnish submits that the significance of a 'single rule' interpretation is that the relevance of special circumstances does not depend on a pre-existing claim to invoke special circumstances advanced by the interested State when ratifying the Convention. Also, an element of elasticity is introduced in the fact that Article 6 now allows the judge discretion to consider the geographical and other circumstances - lying within the rules of delimitation.<sup>69</sup>.

#### Considerations taken into Account in Ensuring the Application of Equitable Principles

The proposition that "there is no legal limit to the considerations which States may take into account of for the purpose of making sure that they apply equitable procedures..."<sup>70</sup> - made by the ICJ in the *North Sea cases* - is somewhat misleading. Taken literally it could mean that there are limitless consideration which could constitute factors productive of inequity.

In the *Anglo-French Decision* the Court pointed out that such considerations must lie "within the rules" of law<sup>71</sup>, thereby qualifying the ICJ's statement. The dictum was to be read in light of other observation of the ICJ in the same judgment<sup>72</sup> and not in isolation; there was no question of a decision *ex aequo et bono*<sup>73</sup> or of "completely refashioning nature"<sup>74</sup>.

#### The Principle of Proportionality

The Court gave proportionality less significance than it had been given in the *North Sea cases*. It held that the notion proportionality may be invoked in order to support the existence of special circumstances as a result of 'unjust distorting effects'<sup>75</sup>.

#### Opposite and Adjacent States Distinguished

France argued that Article 6 was not applicable because the situation was not one of either opposite States or adjacent States. The ICJ's previous rigid differentiation between the two

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<sup>66</sup> Decision, para 68

<sup>67</sup> *ibid*

<sup>68</sup> *ibid*. According to Brown, *supra*, p. 174, the Court's attitude to the burden of proof should be of some concern. He quotes Briggs' declaration appended to the Decision in support of this.

<sup>69</sup> Ahnish, *supra*, p. 65

<sup>70</sup> ICJ Reports 1969, para 98

<sup>71</sup> Brown, *supra*, p.174

<sup>72</sup> Ahnish, *supra*, p.69

<sup>73</sup> ICJ Reports 1969, *supra*, para 88

<sup>74</sup> *ibid*, para 91

<sup>75</sup> Brown, *supra*, p.175

situations was used in support of this<sup>76</sup>. The Tribunal in the *Anglo-French Decision* held that every situation had to fall into either one of the two categories of Article 6; the States were either opposite or adjacent<sup>77</sup>.

### The Tribunal's findings

The Tribunal found that the Channel Island archipelago, being on the '*wrong side of the line*'<sup>78</sup>, was a special circumstance. It then declared a continental shelf of twelve miles for the Islands<sup>79</sup>.

The Tribunal held that the presence of islands - the Scillies - was a case of special circumstances. It took the special circumstance into consideration and departed from the median line. However, if the line were to be measured from the islands rather from the British mainland then there would be an inequitable distortion of the line which would produce a disproportionate share of shelf between the two States<sup>80</sup>.

Thus the Scilly Islands were given 'half effect' in order to achieve an equitable solution.

### Conclusion

- The Tribunal corrected some of the mistakes and reinterprets the dicta of the *North Sea judgment*.
- The doctrine of natural prolongation is given the correct emphasis.
- It restricts the use of proportionality and corrects the lack of limitation on the considerations which may be taken into account in ensuring the application of equitable principles.
- The rigid interpretation of opposite and adjacent situations is rejected.
- An attempt was made to clarify special circumstances, and the relationship between Article 6 and rules of international customary law, but the value of this is questionable. Possibly the Tribunal was too simplistic in finding Article 6 and customary law to reflect of each other<sup>81</sup>. Criticism has also been directed at the Tribunal's stance on the equidistance rule and the burden of proof of special circumstances<sup>82</sup>

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<sup>76</sup> ICJ Reports 1969, para 36. The court had found that Denmark and the Netherlands were neither opposite nor adjacent States, and therefore it could not apply a delimitation.

<sup>77</sup> Decision, para 240 - 242

<sup>78</sup> Decision, para 159

<sup>79</sup> Which the U.K. could have obtained anyway by declaring a twelve-mile territorial sea around the Channel Islands

<sup>80</sup> *Anglo-French decision*, para 249

<sup>81</sup> Brown, supra, p. 177, feels that the Tribunal has gone too far in this regard

<sup>82</sup> *ibid*

**THE LAW UNDER**  
**THE 1982**  
**CONVENTION ON**  
**THE LAW OF THE SEA**

II

**BACKGROUND**

During UNCLOS III the issue of maritime delimitation was a steadfast problem and was eventually referred to Negotiating Group 7<sup>83</sup>. By this time opinion had already split into two main interest groups: The 'Equitable Principles Group', headed by Ireland, and the 'Equidistance Group', headed by Spain<sup>84</sup>. That no attempt to either question or solve the opposition between the groups has been seen as a *major shortcoming*" in the discussions of Group 7<sup>85</sup> Both groups had put forward their own main proposal<sup>86</sup>. This resulted in conflict between the two groups throughout the negotiations of Group 7 and an inability to come to any agreement<sup>87</sup>.

However, finally, a compromise formula was agreed to in August 1981 at the Tenth Session of UNCLOS III, and Articles 74 and 83 were drawn up. This formula has been subject to much criticism, and whether consensus was achieved on the relevant text<sup>88</sup>. In fact, the 'hasty insertion in the draft convention was questioned publicly by many members of the Conference, such as the United States, China, Portugal, Iran, Egypt, Libya and Kuwait'<sup>89</sup>. Allott commented:, "could it be said to be anything but bizarre?"<sup>90</sup>

Article 83 provides the following:

1. The delimitation of the Continental Shelf between States with opposite or adjacent coasts shall be effected *by agreement on the basis of international law*, as referred to in Article 38 of the Statute of the International Court of Justice, in order to *achieve an equitable solution*<sup>91</sup>.
2. If no agreement can be reached within a reasonable period of time, the States concerned

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<sup>83</sup> Group 7 was one of a number of groups appointed by the 1978 Session of the Conference to deal with outstanding hard-core problems. See Ahnish, *supra*, p. 72

<sup>84</sup> Ahnish, *supra*, p. 72

<sup>85</sup> *ibid*

<sup>86</sup> *ibid*

<sup>87</sup> *ibid*

<sup>88</sup> *ibid*, p. 75.

<sup>89</sup> B. Oxman, 'The Third United Nations Conference on the Law of the Sea: The Tenth Session (1981)' 76 AJIL (1982), at p.s 14 - 15

<sup>90</sup> P.Allott, 'Power Sharing in the Law of the Sea', 77 AJIL (1983) 1 at 20)

<sup>91</sup> Emphasis added

shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardise or hamper the reaching of the final agreement. Such agreements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

It is paragraph 1 which contains the compromise formula. According to Brown, the result is that “*the international community is now saddled with a formula which is all that a legal rule should not be - excessively vague and imprecise and drafted by reference to even more vague and controversial concepts*”<sup>92</sup>, and the formula is no more than an “*empty shell*”<sup>93</sup>.

#### **ARTICLE 83(1) - AN INTERPRETATION**

Conference records are not helpful in establishing the meaning of the new formula. The reason for this<sup>94</sup> is probably that interpretation of the text at the time was stifled as it was thought that such an attempt might “*undermine what had been achieved after difficult negotiations*”<sup>95</sup>. Clearly, the basis of this ‘extremely general’<sup>96</sup> formula was considered to be extremely fragile.

##### **The Principle of Agreement:**

Under the Convention delimitation shall be effected by agreement. This formulation is heavily influenced by the *North Sea cases* in which it was held that “*delimitation must be the subject of agreement between the States concerned*”<sup>97</sup>.

Such agreement must be ‘on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice’. The intention of this reference appears to be to limit agreements to the criteria prescribed by international law.

The obligation to reach an agreement on the basis of Article 38 of the Statute of the ICJ is similar in scope to that obligation under international customary law<sup>98</sup>, as identified by the ICJ in the

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<sup>92</sup> Brown, *supra*, p. 157

<sup>93</sup> *ibid*, p. 160

<sup>94</sup> *ibid*

<sup>95</sup> *ibid*. Brown quotes the President’s appeal to delegations to avoid making interpretative statements for this reason. (154th Plenary Meeting, 28 August 1981, *UNCLOS III Official Records*, Vol. XV, 1983, p. 40

<sup>96</sup> *ibid*. p. 158

<sup>97</sup> ICJ Reports (1969), para 85

<sup>98</sup> *ibid*

*North Sea Continental Shelf cases (1969)*. The Court held that parties were under an obligation to enter into negotiations *with a view to arriving at an agreement*<sup>99</sup>. In other words it was *not* simply a matter of going through the motions of negotiation which would then be followed by the application of a certain method of delimitation in the absence of agreement - negotiation was to be 'in good faith'. The negotiations must be meaningful<sup>100</sup>.

#### Conformity with international law:

Delimitation is to be effected 'on the basis of international law' - as noted above. The view has been expressed that a *treaty* provision which merely provides that delimitation shall proceed on the basis of international law is superfluous<sup>101</sup>. In order to determine the meaning of this obligation it is necessary to first determine what the applicable rules of international law are.

The reference to the Statute of the ICJ, Article 38, is quite meaningless and does not help to determine the applicable rules<sup>102</sup>. It simply means that such rules would be determined by generally recognised sources and forms of evidence of international law, which could include judicial decisions and negotiated agreements<sup>103</sup>. These guidelines are rather wide, and according to Ahnish<sup>104</sup>, invite States to "*solve their boundary disputes in accordance with this unwoven fabric of materials...*". This, in fact, is "*practically asking them to 'find' the law themselves*". The Geneva Convention's formula in Article 6 is more restrictive, with its references to median or equidistance lines, and special circumstances, and is perhaps the more realistic approach. The LOSC formula is the converse of this, and has been considered to be a "*dangerous lacuna*" in the Convention's formula. As there are no substantive rules expressed in the provision, States will turn to judicial and arbitral decisions for clarification of the law.

#### An Equitable Solution:

More guidance is given by the qualification in Article 83(1) that "*an equitable solution*" must be achieved. 'Equitable solution' here does not infer that either the 'equidistance' or the 'equitable principles' formula should be utilised. The reference is neutral in this regard<sup>105</sup>. Thus, there was agreement without actually having to expressly refer to the median or equidistance line. The term 'equitable principles' was in fact changed to a vaguer formulation<sup>106</sup> and no further guidelines were given as to the distinction between 'equity' and 'equitable principles'. Unfortunately, this only serves to emphasise the vagueness already inherent in the concept of equity - that equity is a means by which to come to a solution and also the result to be achieved. Further help can be obtained only from court judgments.

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<sup>99</sup> Continental Shelf (Libyan Arab Jamahiriya/Malta) Judgment, ICJ Reports 1985, p.13 at p. 33

<sup>100</sup> *ibid*

<sup>101</sup> Ahnish, *supra*, at p. 79

<sup>102</sup> See Brown, *supra*, p. 158

<sup>103</sup> According to Brown, *ibid*, this is obvious and would have been assumed anyway, had it not been mentioned

<sup>104</sup> Ahnish, *supra*, p. 79

<sup>105</sup> *ibid*

<sup>106</sup> *ibid*, p. 159

### ARTICLES 83(2) AND 83(3)

These Articles provide interim measures pending agreement. Accordingly, “*States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into the provisional arrangements of a practical nature and, during this transitional period, not to jeopardise or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation*”<sup>107</sup>.

### COURT JUDGMENTS

The Tunisia-Libya case and the Libya-Malta case will be examined extensively in the section entitled ‘The Mediterranean Sea’, infra. Settled agreements between Mediterranean States will also be examined.

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<sup>107</sup> Article 83(3), Convention on the Law of the Sea, 1982. If no agreement is reached within a reasonable period of time, the States concerned must submit the matter to conciliation under Part XV - provisions for compulsory conciliation (Article 298(1)(a)).

**PART III**  
**DELIMITATION OF**  
**THE CONTINENTAL SHELF**  
**IN THE**  
**MEDITERRANEAN SEA**

**INTRODUCTION**

The Mediterranean Sea consists of a great expanse of waters, stretching from the Atlantic Ocean on the west to Asia on the east, separating Europe from Asia<sup>108</sup>. Its length is a little over 2 000 nm,width - at its widest point - 600 nm, the area of which is divided between over eighteen sovereign states and three dependent territories. Their coasts vary widely in length, configuration and direction.

As one would expect in enclosed or semi-enclosed seas - such as the Mediterranean - problems tend to arise in regards to the delimitation of maritime zones. States are located in fairly (or very) close proximity, and the situation is further complicated by the presence of numerous islands, some independent, some not. In addition, three States - Spain, Italy and Greece - form extensive peninsulas which run into the sea and divide it.

The purpose of this section is to analyse existing - and possible future continental shelf boundaries in the Mediterranean Sea. An examination will be made of five already settled boundaries, as well as two judgments; the Tunisia-Libya and Libya-Malta continental shelf cases (both mentioned above).

\*A brief summary will be made of events in the Aegean Sea,; the conflict between Greece and Turkey, with a view to suggesting a possible solution.

**SETTLED SHELF BOUNDARIES**

Maritime delimitation in the Mediterranean is complicated mainly by two factors: the existence of several islands and the difficulty in resolving boundary disputes bilaterally without affecting third States' interests. Most of the practice of States and cases adjudicated by the International Court is concerned with bilateral settlements and little guidance is available for three or four-party settlements.

The settlements to be discussed are:

*The Italo-Yugoslav Agreement*

*The Greco-Italian Agreement*

*The Italo-Tunisia Agreement*

*The Italo-Spanish Agreement*

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<sup>108</sup> Encyclopedia Britannica, vol. 23, p. 939

Then,

- A possible French-Spanish boundary
- French-Italian negotiations
- French-Monacan Agreement

The four Agreements concerning Italy contain a modification of the median line due to the special circumstances involving the presence of islands considered to be creative of inequity. The 'equidistance-special circumstance' method of delimitation is used almost exclusively in State practice.

### THE ITALO-YUGOSLAV AGREEMENT<sup>109</sup>

This Agreement was signed in 1968 and came into force two years later, in 1970. The shelf boundary between the two States extends for 363 nm and comprises forty-three 'terminal points', separated by an average distance of just over 8 nm<sup>110</sup>. The northern terminal point of the boundary is joined to the territorial sea boundary<sup>111</sup> and the southern terminal point corresponds roughly with the border between Albania and Yugoslavia<sup>112</sup>.

The Italian-Yugoslav boundary is an equidistant line between the mainland of Italy and the larger islands close to the Yugoslav coast, except between two points on the line where there is a deviation in order to compensate Italy for the influence of the several islands off the Yugoslav coast some of which are located well into the Adriatic Sea, such as Jabuka, Kajula and Pelagruz. One of these islands, Jabuka, was used as a basepoint, although the effect of this was diminished by the fact that the notional median line was shifted eastwards, giving Italy an area of 1 680 sq. km. The islet of Busi was given no effect, but a larger islet, Lissa, was given full effect<sup>113</sup>.

In the south, Italy obtained a further 1 400 sq. km because the furthestmost Yugoslav islands were given no effect. Each island was given a semi-enclave of 12 nm. However, this was compensated by giving the island of Pianosa no effect, thereby conceding an area of 416 sq. km. to Yugoslavia. The Tremiti islands were also given no effect.

A special provision was included on natural deposits straddling the boundary. The parties agreed to proceed, in the interim period, by mutual Agreement<sup>114</sup>.

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<sup>109</sup> Ahnish, *supra*, p. 299

<sup>110</sup> *ibid*, p. 297

<sup>111</sup> This is in accordance with the Treaty of Osimo, 1975, between the two parties

<sup>112</sup> Ahnish, *supra*, p. 297

<sup>113</sup> Ahnish, *supra*, p. 297 - 298

<sup>114</sup> *ibid*, p. 299

## THE GRECO-ITALIAN AGREEMENT<sup>115</sup>

The Agreement was concluded in 1977, entering into force at the end of 1980. The Greek-Italian border runs in a north-south direction for 268 nm. Under the Agreement the line can eventually be extended Northwards and Southwards until it meets the continental shelves of neighbouring States<sup>116</sup>. Under Article 1, a median line was used to determine the border, taking into consideration any mutually approved minor adjustments<sup>117</sup>. Such mutually approved adjustments were made at two points, where the boundary line falls nearer to the Greek coast. The reasoning behind this is probably to offset the effect of the inclusion of fringing Greek islands, in contrast to Italy, whose coast has virtually no islands. Greece made a further concession by accepting the Italian enclosure of the Gulf of Taranto. Two of the turning points are equidistant from the Italian baselines which enclose the Gulf's entrance points at Cape S. Maria di Leuca and Cape Colona<sup>118</sup>. However, at one point the line is 6.1 nm closer to Italy than to the Greek island of Kefallinia<sup>119</sup>.

## THE ITALO-TUNISIAN AGREEMENT<sup>120</sup>

This agreement was signed in 1971 and came into force in 1978. There are thirty four terminal and turning points on the boundary line which effectively delineates the two shelves between Tunisia and Sardinia and Sicily (Italian islands). line's length is 443.36 nm in total<sup>121</sup>. It consists of 'a median line, every point of which is equidistant from the nearest points of the baselines from which the breadths of the Italian and Tunisian territorial seas are measured, taking into account islets and 'low-tide elevations with exception of Lampione, Lampedusa, Linosa and Pantelleria'<sup>122</sup>.

### Pantelleria, Linosa, Lampione and Lampedusa

The islands of Pantelleria and Linosa, close to the notional median line, are disregarded. Lampione and Lampedusa fall on the 'wrong side' of the line - approximately 60 and 69nm from the Tunisian coast respectively, and 115nm from Sicily. Were a true median line to be drawn between these islands and the Tunisian coast, the boundary would be deflected to within 20 to 33nm from the Tunisian mainland<sup>123</sup>. To avoid this distortion the parties agreed to give no effect to the four islands. Instead, the boundary line in the region of the islands diverges from equidistance, and follows the outer limits of the maritime zones drawn around each of the four islands. These maritime zones have been drawn as follows<sup>124</sup>: Pantelleria, Lampedusa and

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<sup>115</sup> *ibid*

<sup>116</sup> Art. 1(3) of the Agreement, quoted by Ahnish, *ibid*, p. 300

<sup>117</sup> *ibid*, p. 301

<sup>118</sup> *ibid*

<sup>119</sup> *ibid*

<sup>120</sup> *ibid*

<sup>121</sup> *ibid*

<sup>122</sup> *ibid*, p. 303. Article 1 of the Agreement

<sup>123</sup> *ibid*

<sup>124</sup> *ibid*

Linosa have been given a 12nm territorial sea and a 1nm continental shelf by drawing a 13nm envelope of arcs which places them on Italy's side of the line. Lampione is the smallest of the three islands and has been granted a 12nm territorial sea but no continental shelf.

Unlike the other Italian agreements the provisional nature of the boundary line is not expressly recognised, perhaps reflecting the parties' view that other neighbouring states - Malta and Algeria - are not entitled to any claim within the terminal points of the boundary<sup>125</sup>. In fact, Malta protested against the south-eastern extension of the boundary (up to point 32) as there is an overlap between the area claimed by Tunisia under the Italy-Tunisia Agreement and the area claimed by Malta under the combination of equidistance and the semi-enclave line around the Italian islands. Discussions between the two States ended in a deadlock<sup>126</sup>.

### **THE ITALO-SPANISH AGREEMENT**<sup>127</sup>

The continental shelf boundary lies between Sardinia and the Balearic island of Minorca under the Agreement of 1974 (entering into force in 1978). It is 137.19 nm in length, comprising ten turning and terminal points<sup>128</sup>. The boundary has been established following the criterion of '...equidistance from respective baselines' under Article 1 of the agreement<sup>129</sup>. Although the parties have claimed straight baselines - Italy around Sardinia and Spain around Minorca - they have not been used to determine the equidistant line. Instead, a concave, 'equidistance' line has been established, taking account of the concave west coast of Sardinia (as it is the larger island)<sup>130</sup>.

There are two potential conflicts. If the equidistance line is utilised the boundary line will extend 5 miles northwards where it will meet with a French maritime zone. A potential Algerian zone will be encountered about 8 miles south of the terminal point. It is unlikely that problems will arise with Algeria. France, on the other hand, does not tend to favour equidistance, so problems are foreseeable<sup>131</sup>.

The view France takes is that the delimitation of her continental shelf should not be decided on a strict application of equidistance because of the fact that the French coast is confined on all sides - from the east, south (Sardinia and the Balearics) and west - by Italy and Spain. Rather, the delimitation should take place according to 'equitable principles'<sup>132</sup>. France in fact proposed the creation of a 'zone of economic interest', consisting of the overlapping continental shelves of the three States, France, Italy and Spain, in which there would be co-operation in the exploration

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125 *ibid*

126 *ibid*

127 *ibid*, p. 307

128 *ibid*

129 *ibid*

130 *ibid*, p. 309

131 *ibid*

132 *ibid*

and exploitation of mineral resources<sup>133</sup> .

#### Negotiations between France and Spain

Preliminary discussions between France and Spain took place in 1978, but no conclusion was reached<sup>134</sup> .

Both States are parties to the Geneva Convention, 1958. France has entered a reservation to Article 6 stating that in the absence of an express agreement France will not accept any continental shelf boundary determined on the equidistance principle invoked against it if it extends beyond that 200-metre isobath<sup>135</sup> . Most of the continental shelf area off the French-Spanish coasts extends beyond this. In practice, however, France does not appear to renounce the reservation. The French Government has determined the extension of its continental shelf by reference only to the distance criterion of 200nm, with no mention of depth<sup>136</sup> . Ahnish submits that the reservation is no longer significant because it was motivated by opposition in 1958 to the exploitability criterion included in Article 1<sup>137</sup> .

Therefore, the application of Article 6 would entail the identification of special circumstances as a result of the shape of Italy and Spain's coasts and the position of the Balearic Islands, opposite the coast of France.

With regard to the shape of the States' coasts, the protrusion of the Spanish coast at Cape Creus causes concavity in the French coast which is emphasised by the fact that the coast then runs in a slightly north-easterly direction. This concavity would cause France to be disadvantaged were equidistance to be strictly applied. Thus, a modified equidistant boundary could be achieved by giving the peninsula at Cape Creus half-effect<sup>138</sup> .

Whether or not such a boundary could be extended beyond the 12nm territorial sea depends largely on the boundary drawn for the opposite coasts of France and the Balearic Islands. France would probably argue here that these islands should not be given full effect as this would prevent the extension of the French continental shelf southwards. However, this is unreasonable because although the Balearic Islands are opposite the mainland of France and the island of Corsica, they cannot be regarded as falling on the 'wrong side' of the median/equidistance line, and are actually much closer to the Spanish coast than to the French coasts<sup>139</sup> . Ahnish suggests that France may be compensated by giving full effect to the islands of Hyeres, in the French territorial sea, opposite Minorca<sup>140</sup> .

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133 *ibid*

134 *ibid*, p. 310

135 *ibid*, p. 310

136 *ibid*. Refers to Art. 2 Law No. 76-655 of 1976

137 *ibid*

138 *ibid*

139 *ibid*, p. 312

140 *ibid*

### Negotiations between France and Italy

Delimitation of the continental shelf between these two States is complicated by the presence of islands; Corsica and Sardinia are fairly large islands lying off their coasts, and further smaller islands lie off the coast of Tuscany preventing the application of a simple equidistance line.

The continental shelf north and east of Corsica which consists of a relatively shallow plateau joining the island to the mainland. This area is not accessible from the west coasts of Sardinia and Corsica.

Negotiations for delimitation of the territorial sea and continental shelf in this area reportedly took place between the two States between 1972 and 1974. These negotiations resulted in an agreement *ad referendum* on a draft convention<sup>141</sup>, which established an equidistant line - adjusted in the Gulf of Genoa and the Tyrrhenian Sea, east of Corsica, and in the Bocche de Bonifacio. The line gave effect to almost all islands, with the exception of some very small islands<sup>142</sup>.

The defining of the median line proper in the Bocche de Bonifacio took place in 1986<sup>143</sup>. However, there was no consensus with regards to the rest of the area. Thus no agreement could be reached.

*“The Italian delegation reserved its position as to the exact placing by France of the turning-points in the Côte d’Azur/Riviera, Bocche de Bonifacio, and as to the exchange of total areas in the Gulf of Genoa. The French delegation... reserved its position on the Italian plan at the time to establish straight baselines around, inter alia, the Tuscan archipelago”*<sup>144</sup>

At this point France evoked the reservation over Article 6 that, without a specific agreement, France would not accept a continental shelf boundary on the basis of equidistance and by reference to straight baselines established after 29 April 1958. The two parties then agreed that they would consider establishing specific ‘baselines’ on land for delimitation purposes<sup>145</sup>.

With regard to the area west of Corsica and Sardinia the parties were unable to come to any agreement as to the appropriate method of delimitation. This could be due to the fact that the area may contain oil<sup>146</sup> and France is aware that Sardinia - which extends further west than Corsica - is situated adjacent to Corsica and opposite the coast of continental France, thereby preventing the full extension of France’s continental shelf southwards.

Thus, when Italy suggested an equidistant line be drawn, taking into account the existing Italian-Spanish boundary line, France rejected this, proposing instead the creation of a joint ‘zone of economic interest’ between them, as mentioned above.

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<sup>141</sup> *ibid*, ‘Compendium of Negotiations between Italy and France on the Delimitation of the Continental Shelf’, meeting of 25 - 26 February 1974, unpublished document

<sup>142</sup> *ibid*, p. 313

<sup>143</sup> *ibid*

<sup>144</sup> *ibid*

<sup>145</sup> *ibid*

<sup>146</sup> *ibid*

## **THE FRENCH-MONACAN AGREEMENT**

The Agreement took place in 1984, entering into force in 1985<sup>147</sup>. This agreement is worth mentioning because it provides for the first single maritime boundary to be established in the Mediterranean Sea<sup>148</sup>.

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<sup>147</sup> *ibid*, p. 315

<sup>148</sup> *ibid*

## THE TUNISIA-LIBYA CONTINENTAL SHELF CASE (1982)<sup>149</sup>

In this case neither State was a party to the Geneva Convention. Ideally, the case should have been an “*important landmark in the development and clarification of the rules governing delimitation of the continental shelf between neighbouring states*”<sup>150</sup>, had the Court taken the opportunity to review its findings in the *North Sea Continental Shelf cases (1969)*. At the time, UNCLOS III was in its final stages, and clarification of the law would have been appropriate, particularly regarding customary international law and taking into account subsequent developments which had occurred in the intervening period. Unfortunately, any such expectations were to be disappointed. In fact, the judgment could be considered a distinct step backwards compared to the decision of the Court of Arbitration in the *Anglo-French Continental Shelf case*<sup>151</sup>.

The Court was asked to decide the following:

*What principles and rules of international law may be applied for the delimitation of the area of the continental shelf appertaining to the Socialist People’s Libyan Arab Jamahiriya and to the area of the continental shelf appertaining to the Republic of Tunisia, and the Court shall take its decision according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea.*

The Court was also asked to “*clarify the practical method for the application of these principles and rules in this specific situation, so as to enable the experts of the two countries to delimit these areas without any difficulties*”<sup>152</sup>.

The Court felt that no particular method of delimitation was obligatory, including equidistance (this echoed earlier decisions), and that a variety of methods could be applied to the same delimitation<sup>153</sup>. Although willing to consider the law under Article 83 of the new Convention, the Court noted that the Article lacked “*any indication of a specific criterion which would give guidance to the interested States in their effort to achieve an equitable solution*”<sup>154</sup>. Rather, it emphasised the need to achieve an equitable solution<sup>155</sup>. Thus, both parties and the Court agreed that the delimitation was to be carried out in accordance with ‘equitable principles’, taking into consideration the relevant circumstances which characterised the area.

The following principles were considered.

### Natural Prolongation:

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<sup>149</sup> *The Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, ICJ Reports 1982*

<sup>150</sup> E.D. Brown, *The Tunisia-Libya Continental Shelf case: A missed Opportunity*, 7 MP (1983) p. 142

<sup>151</sup> Brown, *supra*, *The International Law of the Sea*, Vol. 1, 1994, p. 179

<sup>152</sup> Judgment, *supra*, para 4. Quoted by Ahnish, *supra*, p. 315

<sup>153</sup> Judgment, *supra*, para 109 - 111

<sup>154</sup> *ibid*, para 50

<sup>7</sup> *ibid*

In its judgment in the *Anglo-French Continental Shelf case* the court, while still considering the doctrine of natural prolongation to be important - particularly in relation to relevant circumstances from the point of view of equity - had rejected the doctrine as a basis for delimitation of the continental shelf<sup>156</sup>.

In this case the two parties put forward different contentions as to the geological and geomorphological formation of certain features in order to support their arguments. The area of the continental shelf subject to the delimitation was part of a region known as the Pelagian Block. Libya contended that the area off its coast, constituting the Pelagian Block, was the natural prolongation northward of the North African land mass to the south, in as far as it constituted a typical continental margin produced by plate movement and rifting, explained by the theory of 'plate tectonics'<sup>157</sup>. Thus, Libya submitted, the appropriate method of delimitation "... is to reflect the direction of this prolongation northward of the terminal point of the land boundary"<sup>158</sup>.

Tunisia argued that the Pelagian Block was the geological and geomorphological continuation of the land territory of Tunisia, because they were both aligned generally in an east-west direction<sup>159</sup>. Tunisia's intention was to establish that "*the natural prolongation of its territory extended eastwards as far as the area between the 250 - 300 metre isobath, and south-eastwards as far as the zone constituted by the Zira and Zuwarah Ridges*"<sup>160</sup>.

However, the Court held that the satisfaction of equitable principles was of foremost importance, and that the two considerations of satisfying equitable principles and identifying natural prolongation "*are not to be placed on a plane of equality*"<sup>161</sup>.

The Court stated that "*in the present case, no criterion for the delimitation of shelf areas can be derived from the principle of natural prolongation as such*"<sup>162</sup>. The reason for this was that "*Libya and Tunisia both derive continental shelf title from a natural prolongation common to both territories*", thus, "*the ascertainment of the extent of the areas of shelf appertaining to each State must be governed by criteria of international law other than those taken from physical features*"<sup>163</sup>.

Although the rejection of the doctrine of natural prolongation only applies to the physical circumstances of this case, the circumstances are not so dissimilar to those occurring off the coasts of other States that the rejection will be an isolated event. Thus, rather than being a basis of delimitation, natural prolongation should be considered to be a special circumstance.

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<sup>156</sup> Brown, *supra*, MP, p. 146

<sup>157</sup> Judgment, *supra*, para 52

<sup>158</sup> Ahnish, *supra*, p. 317

<sup>159</sup> *ibid*

<sup>160</sup> *ibid*

<sup>161</sup> Judgment, para 44

<sup>162</sup> *ibid*, p. 92

<sup>163</sup> *ibid*, para 67

### Equitable principles:

The judgment adds little to either clarifying judicial thinking on the matter or providing guidelines for applying such principles in negotiations. The meaning of 'equitable principles' is particularly important in the light of Article 83(1) of the Law of the Sea Convention, which requires that 'an equitable solution' be arrived at. Since the ICJ has emphasised the 'primordial importance'<sup>164</sup> of equitable principles in delimitation, it would not be unreasonable to expect a subsequent clarification of the scope and meaning of these principles. However, such clarification is not provided.

Paragraphs 70 and 71<sup>165</sup> contain an examination of the concept of equitable principles, although the propositions stated are somewhat general and abstract. This stated that "*The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result*" and "*The term 'equitable principles' ... refers back to the principles and rules which may be appropriate in order to achieve an equitable result*". No attempt is made to define 'equitable result', which, it appears, would provide some sort of meaning to the term 'equitable principle'.

Further, that "*Equity as a legal concept is a direct emanation of the idea of justice*" and "*The legal concept of equity is a general principle directly applicable as law*" is of little help in actually determining what equity means.

Finally, the fact that equitable principles are distinguished from decisions *ex aequo et bono* is also not very helpful. The fact that a case is decided *ex aequo et bono* does not mean that the Court is freed from the strict application of legal rules in order to bring about an appropriate settlement, but rather that the Court may "*depart from the law (whether strictly or equitably interpreted)*" so that a fair result may be achieved, which it would not otherwise have been possible under the application of the law<sup>166</sup>.

### Relevant circumstances

Although relevant circumstances will obviously depend on the circumstances of the particular case under discussion, the ICJ identified certain circumstances relevant in the determination of an equitable delimitation. They were identified as follows<sup>167</sup>:

- geographical and geomorphological circumstances:
  - the area relevant to the delimitation
  - the general configuration of the coasts
  - islands as relevant circumstances
  - geomorphological configurations

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<sup>164</sup> Brown, supra, MP, p. 148

<sup>165</sup> Judgment, supra, p. 60 para 71

<sup>166</sup> Brown, supra, MP, p. 149

<sup>167</sup> As summarised by Brown, supra, p. 182

- the existence and interests of other States in the area and the existing or potential delimitations between each of the parties and such States
- the position of the intersection of the land frontier with the coastline
- a number of alleged maritime limits resulting from the conduct of the States concerned
- historic rights claimed
- economic considerations

In the *Libya-Tunisia case*, Tunisia's coast changes direction from an east-westerly direction at Ras Ajdir into a south-west, north-east direction as it extends further westward<sup>168</sup>. This characteristic was considered to be 'largely significant' as a relevant circumstance characterising the area. Although it did not quite make the situation legally one of opposite States rather than adjacent ones, it did modify the situation of lateral adjacency of the two parties<sup>169</sup>.

The presence of islands was also considered to be a special circumstance. The Tunisian islands of Jerba and Kerkennah, and surrounding low-tide elevations were taken into consideration. However, regarding Jerba, although the island was relevant, other considerations prevailed over the effect of its presence, such as the existence and position of the Kerkennah Islands and surrounding low-tide elevations<sup>170</sup>.

Also regarded as relevant was the land boundary terminus at Ras Ajdir, and the fact that the parties had in the past attempted to establish unilateral and bilateral partial maritime or adjoining concession boundary claims in the areas off Ras Ajdir<sup>171</sup>.

The 'historic claims' made by Tunisia were relevant not as an independent circumstance as Tunisia had argued, but rather, in relation to the principle of non-encroachment. In the circumstances of this case, the Court found that these historic rights claimed by Tunisia were not sufficient to affect the delimitation<sup>172</sup>.

#### The practical method

The Court stated that neither equidistance nor any other method of delimitation was obligatory. Further, several methods could be applied to the same delimitation<sup>173</sup>. The starting point for any examination of methods, such as the examination of 'applicable principles and rules', must be the

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<sup>168</sup> Ahnish, p. 320

<sup>21</sup> *ibid*

<sup>170</sup> Judgment, *supra*, para 79

<sup>171</sup> *ibid*, para 85 - 86

Also, Ahnish, *supra*

<sup>172</sup> *ibid*, para 121

<sup>173</sup> *ibid*, para 109 - 111

particular geographical circumstances of the case, and particularly “the extent and features of the area” to be delimited<sup>174</sup> .

If given full effect, the Kerkennah Islands would, in the circumstances of the case, be given ‘excessive weight’<sup>175</sup> . Thus, they were granted half-effect<sup>176</sup> .

Although the Court considered what method of delimitation would ensure an equitable result, in Judge Oda’s view, the line drawn by the Court did not “*exemplify any principle or rule of international law*”<sup>177</sup>.

### Conclusion

It is this case that Brown considers to be a ‘missed opportunity’. The judgment has been criticised as lacking in legal principle, verging on an unauthorised determination *ex aequo et bono*, and ‘providing little guidance for the delimitation of maritime boundaries in other disputes’<sup>178</sup> . Having ‘toned down’ many of the dicta of the ICJ in the *North Sea* cases in the subsequent *Anglo-French Continental Shelf* arbitral decision, it appeared that substantial progress was being made in clarifying and developing this particular area of law<sup>179</sup> . However, in the light of the need for guidelines to interpret Article 83(1) of the new Convention and the previous progress made, the case may be considered a ‘regression’ and a ‘considerable disappointment’<sup>180</sup> . On a more positive note the Court did follow the Court of Arbitration’s decision in the *Anglo-French case* to a large extent with regard to natural prolongation. But this is “*more than outweighed by the Judgment’s many defects... failure to clarify the meaning of equitable principles and to keep in mind the need to distinguish clearly between the application of equitable principles and the rendering of a Judgment ex aequo et bono*”<sup>181</sup>.

Feldman, however<sup>182</sup>, believes that the Court “*took a significant step towards the formulation of integrated principles that can be applied...*”<sup>183</sup> . It reconfirmed that equity does not entail a sharing out of shelf resources, it reconfirmed the principle that the ‘land dominates the sea’<sup>184</sup> . Further, it was confirmed that a delimitation must not encroach on areas adjacent to the parties’ coasts; that geology is not of major significance in maritime delimitation, and that a reasonable degree of proportionality must be effected between areas appertaining to the coastal States and to

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<sup>174</sup> *ibid*, para 144

<sup>175</sup> *ibid*, para 128

<sup>176</sup> *ibid*, para 129

<sup>177</sup> ICJ Reports 1982, p. 269, para 180

<sup>178</sup> M.B. Feldman, *The Tunisia-Libya Continental Shelf Case: Geographic Justice or Judicial Compromise?*, AJIL 77 (1983), p. 219

<sup>179</sup> Brown, *supra*, MP, p. 160

<sup>180</sup> *ibid*

<sup>181</sup> *ibid*, p. 161

<sup>182</sup> Feldman, *supra*, see n. 219

<sup>183</sup> *ibid*

<sup>184</sup> quoted in the *North Sea continental shelf case*, 1969

the length of their relevant coasts<sup>185</sup> .

In 1988 the parties agreed to implement the Court's decision<sup>186</sup> .

### **THE LIBYA-MALTA CONTINENTAL SHELF CASE (1985)**<sup>187</sup>

In this case the Court was asked to determine the principles and rules of international law to be applied to the delimitation the continental shelf between Libya and Malta, and to indicate how in practice such principles and rules could be applied by the parties so as to effect the delimitation by agreement without difficulty<sup>188</sup> .

The Libya-Malta case was the first to be decided by the ICJ since the adoption of the Law of the Sea Convention, 1982. However, the Convention was not yet in force, and Libya was not a party to the Geneva Convention on the Continental Shelf, 1958. Thus, strictly speaking, the case had to be decided on the basis of international customary law. However, the judgment clearly demonstrates that although the 1982 Convention was not yet in force, it was nonetheless of major importance in international law for law of the sea decisions<sup>189</sup>: The Court, therefore, considered whether any provisions from the Convention would be binding on the parties as rules of international customary law<sup>190</sup> .

There were two complications in this case: firstly, an intervention by Italy and the Court's refusal to accept it; Secondly, Libya's reliance extensive on the principle of natural prolongation which it believed to be justified by the Court's assertion that "*identification of natural prolongation may... have an important role to play in defining an equitable delimitation*"<sup>191</sup>.

As a result of Italy's attempt to intervene, the Court decided to limit its jurisdiction to an area in which third-state claims did not exist. This is rather paradoxical. It appears that having realised that it had no jurisdiction over the claims of a third State, the Court nevertheless decided to exclude areas of *actual* dispute between the parties, because of Italy's claims<sup>192</sup>. In doing so it lost sight of the scope of the dispute between the two original parties<sup>193</sup> . This was the reason for Italy's request to intervene anyway, which the Court denied.

Having identified the area of jurisdiction open to it, the Court endorsed its statement in the *Tunisia-Libya case* that delimitation should be based on equitable principles which would ensure an equitable result<sup>194</sup>.

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<sup>185</sup> Feldman, *supra*, p. 220

<sup>186</sup> Ahnish, *supra*, p. 324

<sup>187</sup> *Continental shelf (Libyan Arab Jamahiriya/Malta, Judgment, ICJ Reports 1985* (judgment)

<sup>188</sup> Judgment, *supra*, para 19

<sup>189</sup> M. Leigh, *Judicial Decisions, Case Concerning the Continental Shelf (Libyan Arab Jamahiri/Malta, Judgment, 1985, ICJ Rep 13*, 80 ICLQ (1986) p.645

<sup>190</sup> Brown, *supra*, p. 192

<sup>191</sup> para 44, *Tunisia-Libya case*, quoted by Ahnish, *supra*, p 324

<sup>192</sup> Ahnish, *supra*, p. 327

<sup>193</sup> comment by Judge Oda, 113, para 11, quoted by Ahnish, *supra*, p. 326, n. 115

<sup>194</sup> Judgment, *supra*, para 28

For the first time the Court considered the concept of the exclusive economic zone (EEZ) and its effect on the rules for delimitation of the Continental Shelf<sup>195</sup>. It was observed that under the 1982 Convention the same right enjoyed by a State over its continental shelf could also be asserted over the EEZ. This, the Court found, should be taken as a relevant circumstance for the delimitation of the continental shelf. However, it did not mean that “*the concept of the continental shelf has been absorbed by that of the exclusive economic zone; it does however signify that greater importance must be attributed to elements, such as distance from the coast, which are common to both concepts*”<sup>196</sup>. These two concepts - those of the continental shelf and the EEZ - were considered to be “*linked together in modern law*”<sup>197</sup>. The Court further stated that the distance criterion must now apply to the continental shelf *and* the EEZ, quite apart from the provision dealing with distance in paragraph 1, Article 76 (LOSC)<sup>198</sup>.

The Court’s new view of the law has been summed up as follows<sup>199</sup>:

- geological or geomorphological factors are irrelevant to the definition of, or basis of legal entitlement to, the continental shelf except where it extends more than 200 miles from the coast;
- geological or geomorphological factors are irrelevant to the delimitation of the continental shelf between opposite States in cases where the distance between the States does not exceed 400 miles;
- these propositions rest on rules of international customary law and do not rely for their validity on the UN Convention.

The Court found that the distance between Malta and Libya was less than 400 miles and therefore geology or geomorphology was irrelevant, thus rejecting the argument that the ‘rift zone’ constituted a fundamental discontinuity “*terminating the southward extension of the Maltese shelf and the northward extension of the Libyan shelf as if it were some natural boundary*”<sup>200</sup>.

Principle issues considered were as follows.

#### The Doctrine of Natural Prolongation

The Court found that the distance criterion was to apply to the continental shelf as well as the

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<sup>195</sup> Brown, *supra*, p. 192

<sup>196</sup> Judgment, para 33

<sup>197</sup> *ibid*

<sup>198</sup> *ibid*, para 34. The Court considered this to be a valid conclusion, irrespective of whether or not the State had actually claimed an EEZ. This is convenient for two reasons: the State may subsequently claim an EEZ, and also, there is no divergence between art. 76 and the corresponding rules of international customary law. See Brown, *supra*, p. 192

<sup>199</sup> Quoted from Brown, *supra*, p. 193

<sup>200</sup> Judgment, para 39

EEZ. However, it was emphasised that the idea of natural prolongation “*had not been superseded by that of distance*”<sup>201</sup>. Rather, in a situation where the continental margin was less than 200 miles from the coast, natural prolongation is partially defined by distance from the shore, regardless of the physical nature of the intervening sea-bed and subsoil. In other words, the two concepts of natural prolongation and distance are not opposed but complimentary<sup>202</sup>.

Unfortunately, how natural prolongation could be partially defined by distance from the shore, and in what way these two concepts could be considered complementary, was not explained. Judge Oda, concerning the above statement by the Court, said that it “*is surely, at least within the 200-mile context, no more than a method of keeping ‘natural prolongation’ alive by artificial respiration*”<sup>203</sup>. It has been submitted that it would have been more acceptable for the Court to simply reiterate the reasonable view that the development of the law since the 1977 *Anglo-French Award* has progressively indicated the relative demise of the concept of natural prolongation, at least within the 400-mile distance<sup>204</sup>.

Thus, it was the Court’s opinion that an equitable result was achieved by tracing the median line between the opposite coasts of the two parties, “*by way of a provisional step in a process to be continued by other operations*”<sup>205</sup>

#### Equidistance

Equidistance is to be applied to a delimitation as a first stage of the process. But the results of this ‘first stage’ are reversible, and cannot be supported solely by evoking numerous examples of delimitations using equidistance or modified equidistance<sup>206</sup>. However, the Court felt that there was impressive evidence to support the fact that equidistance could produce an equitable result in a wide variety of situations<sup>207</sup>.

#### Relevant circumstances

The equity of the provisional line was examined in light of relevant circumstances. The Court decided that Malta’s straight baseline system - which connected, *inter alia*, the island of Malta to the Rock of Filfla (uninhabited) - should be disregarded. By ignoring Filfla “*the disproportionate effect of certain islets, rocks and minor coastal projections*” could be eliminated<sup>208</sup>.

Two further relevant circumstances were the disparity in lengths of the coastlines of the two

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201 *ibid*, para 34

202 *ibid*

203 Dissenting judgment, 129

204 Ahnish, *supra*, p 330

205 Judgment, para 62

206 *ibid*, para 44

207 *ibid*

208 *ibid*, para 64

parties and the macrogeographical position of Malta in the mid-Mediterranean<sup>209</sup>. The Court found that the former circumstance justified the adjusting of the median line northwards in order to give Libya a larger area of continental shelf<sup>210</sup>. This circumstance was not to be confused with the use of the same factor in assessing ratios of proportionality<sup>211</sup>; this was a significant development in the case-law which had formerly examined the disparity in coastal lengths within the context of proportionality<sup>212</sup>. How far northwards the median line should be moved was to be decided in a wider geographical context.

The geographical location of the Maltese islands - located in the northern seaboard of the Mediterranean - was considered to be a relevant circumstance, particularly relevant with regard to the matter of adjusting the median line<sup>213</sup>.

The final result entailed moving the line north by three quarters of the distance between the original median line between Malta and Libya and the median line between Sicily and Libya<sup>214</sup>, which achieved an equitable result in all the circumstances, according to the Court.

### Conclusion

The judgment is significant for several reasons: it deals with the impact of the concept of the EEZ on continental shelf delimitation, considered for the first time by a court; it clarifies the fact that geological or geomorphological factors are irrelevant to delimitation between opposite States in circumstances when the distance between them is 400 miles or less; it at least acknowledges the impressive evidence that the equidistance method can frequently yield an equitable result; and it confirms the important role of equitable principles in maritime delimitation<sup>215</sup>.

It is unfortunate that the Court was so reluctant to discard the idea of natural prolongation. Its retention of it as "*more and more a complex juridical concept... in part defined by distance from the shore, irrespective of the physical nature of the intervening sea-bed and subsoil...is distinctly unnatural*"<sup>216</sup>.

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209 Brown, *supra*, p. 195

210 Judgment, para 68

211 Ahnish, *supra*, p. 331

212 *ibid.* As it did, for example, in the *Tunisia-Libya case*, para 131

213 Judgment, para 68

214 *ibid.*, para 73

215 Brown, *supra*, p. 195

216 *ibid.*

**THE AEGEAN SEA**  
**CONTINENTAL SHELF DISPUTE**

IV

**INTRODUCTION**

The Aegean Sea is an arm of the Mediterranean Sea. It is connected through the straits of the Dardanelles, the Sea of Marmara, and the Bosphorous with the Black Sea<sup>217</sup> and is encircled by the Cretan islands in the south, the coast of Turkey in the east, and the mainland of Greece in the west and north<sup>218</sup>.

**The Dispute**

In November, 1973, the Turkish government published a map in the Turkish Government Gazette which designated areas of the Aegean - including Greek areas - for exploration purposes, and issued exploration concessions to the Turkish Petroleum Company<sup>219</sup>.

The friction was heightened when, in 1974 and 1976, Turkish Oceanographic research vessels entered the Aegean to carry out research activities in what Turkey claimed to be the "*Turkish continental shelf*"<sup>220</sup>.

In March, 1987, Turkey once again planned to conduct seismic surveys in an area under dispute. The plan was called off in an effort to ease the tension between the two States<sup>221</sup>.

Greece first began granting oil concessions in the Aegean in the early 1960s<sup>222</sup>. However, Greece has not actually published concession areas "*coinciding with its claims in the Aegean*" - unlike Turkey. Thus, Greece's practice does not reflect her view on the continental shelf boundary with Turkey<sup>223</sup>.

In August, 1976, the Greek Government instituted proceedings against the Government of Turkey in the ICJ. The issue in question was a dispute over the delimitation of the continental shelf in the Aegean Sea and a declaration of the rights of parties in the region<sup>224</sup>. On the same day Greece also filed a request for interim measures of protection requesting that the Court instruct

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<sup>217</sup> The Encyclopaedia Britannica, Vol. 1

<sup>218</sup> Ahnish, supra, p 356

<sup>219</sup> *Unilateral Turkish Claims in the Aegean*, Hellenic MFA on the Internet,  
<http://www.mfa.gr/foreign/bilateral/aegeen.htm> (hereinafter, Hellenic MFA)

<sup>220</sup> Statement made by the Turkish Minister for Power and National Resources. Quoted by Ahnish, supra, p. 358

<sup>221</sup> Ahnish, supra, p. 359

<sup>222</sup> *ibid*

<sup>223</sup> *ibid*

<sup>224</sup> A.E.Evans, *Judicial decisions: Aegean Sea Continental Shelf Case (Greece v. Turkey) (1978) ICJ Reports 1., 73*  
AJIL

(1979) p. 493

Greece and Turkey to refrain from certain activities<sup>225</sup> in the continental shelf areas in dispute in the present case, unless with the consent of each other and pending the final judgment of the Court in this case, and to refrain from taking further military measures or actions which could threaten peace<sup>226</sup>. Greece also addressed the Security Council regarding the matter, claiming that a dangerous situation had arisen concerning Turkey's recent actions in the continental shelf of the Aegean, which was a threat to peace and security<sup>227</sup>. Turkey's reply to the ICJ was that the Court lacked the necessary jurisdiction over the application. In fact, the Court held that it did not have jurisdiction over the dispute<sup>228</sup>.

## **PRINCIPLES OF DELIMITATION**

### **Turkey**

Turkey is not a party to the Geneva Convention, nor to LOSC. It did, however, strongly support the concept of 'equitable principles' in the UNCLOS III proceedings. Turkey was of the belief that the entire Aegean Sea constituted an example of a 'special circumstance', and should be treated as such when applying the rules of international law. The Turkish delegation also felt that islands, islets and rocks in the area of the Aegean should be taken into consideration, as they could have a distorting effect on the EEZ<sup>229</sup>.

### **Greece**

Greece is a party to the Geneva Convention. Therefore, any claims are based on the Convention. In its *Note verbale* (1974) Greece stressed these points: that territorial sovereignty over the Greek islands extended to Greece's sea-bed and subsoil as well as the continental shelf, according to international law; and that the delimitation of the shelf is based on the theory and practice of international law on the principle of equidistance, according to Article 6(1) of the Geneva Convention<sup>230</sup>. In its proceeding against Turkey<sup>231</sup>, Greece's intention was "to deny Turkey any seabed area beyond the coasts of the Aegean islands situated off the coast of Anatolia"<sup>232</sup>.

Greece supports the rights of islands to a continental shelf, and cites the Geneva Convention, LOSC and the North Sea cases<sup>233</sup>. At UNCLOS III Greece supported the equal treatment of islands and islets with regards to continental shelf entitlement. However, in its draft articles Greece suggested that the phrase 'special circumstances' be deleted from the text. The reason for this was Greece's belief that "no State is entitled to extend its sovereignty beyond the median line

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<sup>225</sup> Such as exploration activity and scientific research. See *Aegean Sea Continental Shelf, Interim Protection, Order of*

*September 1976*, (1976) ICJ Rep., 15 ILM 985. Cited by L. Gross, *The Dispute between Greece and Turkey concerning the continental shelf in the Aegean*, 71 AJIL (1977), p. 32

<sup>226</sup> L. Gross, *The Dispute between Greece and Turkey concerning the continental shelf in the Aegean*, 71 AJIL (1977) p. 32

<sup>227</sup> *ibid*

<sup>228</sup> Evans, *supra*, p. 493

<sup>229</sup> Ahnish, *supra*, p. 360

<sup>230</sup> Greek *Note verbale*. Quoted by Ahnish, p. 361

<sup>231</sup> *Aegean Sea Continental Shelf case*, ICJ Reports (1978)

<sup>232</sup> Ahnish, *supra*

<sup>233</sup> Hellenic MFA, *supra*

every point of which is equidistant from the nearest points of the baselines, continental or insular, from which the continental shelf of each of the two States is measured”<sup>234</sup>. Thus, it is with regard to the principles of law to be applied in the Aegean that the two States are in conflict.

### **Political Factors**

However, there are also influences of a political nature regarding oil resources, access in the eastern Aegean to and from the Dardanelles and the major ports of Anatolia, and air traffic<sup>235</sup>.

Turkey has felt that certain legal regimes such as innocent passage and freedom of navigation, and overflight in the high seas could be threatened in times of crisis with Greece<sup>236</sup>.

Greece, on the other hand, views Turkey’s equidistant line in the middle of the Aegean as an attempt by Turkey to “restructure the political frontier decided in the 1923 and 1947 Agreements”<sup>237</sup>. Further, Greece naturally sees any attempt to cut off continuity between Greek-owned islands and mainland Greece as a threat to the “national integrity” of the islands<sup>238</sup>.

### **CONCLUSION**

Greece has been critical of Turkey’s refusal to submit her claims to the judgment of the Court<sup>239</sup>. However, as can be seen, the issue is largely political. Thus, political security is an essential factor in each of the parties legal stand-points<sup>240</sup>. This factor would have to be considered in a resulting delimitation. The dispute cannot be settled until political differences are solved.

#### **With regard to the law on delimitation, generally**

That this field of law is vague cannot be denied. It is true that a body of law dealing with such a wide variety of circumstances needs a degree of flexibility to be applied to all situations. However, there is a danger that such flexibility is creates too much uncertainty. Certainly, having examined a variety of cases, it appears that different courts and tribunals attach varying definitions to the principles and rules of law applicable to delimitation.

Although case law recently has created more certainty in the law than before,, for example in clarifying the role of natural prolongation, the situation is not yet ideal. As has been seen above, the Tunisia-Libya case was considered to be a disappointment, In the more recent *Greenland-Jan Mayen maritime delimitation case* (1993)<sup>241</sup>, Vice-President Oda stated that the line drawn did not appear “to be founded on any justifiable reasoning”. Each time the Court (or arbitration) departs from previous practice it takes a step further away from clarifying the law on delimitation. There is still a significant amount of progress to be made

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<sup>234</sup> UNCLOS III, *Official Records*. Quoted by Ahnish, *supra*, p. 361

<sup>235</sup> Ahnish, *supra*, p. 362

<sup>236</sup> *ibid*

<sup>237</sup> *ibid*

<sup>238</sup> *ibid*

<sup>239</sup> Hellenic MFA, *supra*

<sup>240</sup> *ibid*, p. 363

<sup>241</sup> ICJ Reports, 1993, p. 38

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